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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-675

JOAN T. NORMAND,
Defendant-Petitioner,

versus

STATE OF LOUISIANA,
Plaintiff-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

CAMILLE F. GRAVEL, JR.
JAMES MICHAEL SMALL
GRAVEL, ROY & BURNES
P. O. Box 1792
711 Washington Street
Alexandria, Louisiana
Attorneys for
Defendant-Petitioner

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No.

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STATE OF LOUISIANA,
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

JOAN T. NORMAND, your petitioner, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Louisiana which affirmed the conviction of your petitioner of the offense of second degree murder from the Ninth Judicial District Court, Rapides Parish, Louisiana.

OPINIONS BELOW

Ninth Judicial District Court
Rapides Parish, Louisiana

Attached to this petition are certified copies of the Grand Jury Indictment and the amended Bill of Indictment charging petitioner with second degree murder. (See Appendix A and B.) Also attached to and made part of this petition is a certified copy of the Ninth Judicial District Court minutes reflecting the jury verdict of guilty as charged (second degree murder) and the judgment imposing sentence in the case of *State of Louisiana v. Joan T. Normand.* (See Appendix C.)

Supreme Court of Louisiana

The opinion of the Louisiana Supreme Court bears the following style and caption: *State v. Normand,* La. 298 So. 2d 823. A copy of the opinion is attached to this petition and made part hereof. (See Appendix D.)

JURISDICTION

The decision of the Louisiana Supreme Court affirming mover's second degree murder conviction was entered on July 1, 1974. Mover made a timely application for a rehearing which was denied by the Louisiana Supreme Court on August 30, 1974. (See Appendix D & E.) Mover's petition for writ of certiorari is due on or before November 29, 1974. [See U.S. Supreme Court Rules 22(1) and 34].

The jurisdiction of this Court is invoked under the provisions of 28 U.S. Code Section 1257(3).

THE QUESTIONS PRESENTED

1. Whether petitioner, a female, was denied rights guaranteed her under the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution by the exclusion of women from the General Jury Venire, Grand Jury Venire, Grand Jury and Petit Jury pursuant to Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure, Article 402.

2. Whether Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure Article 402, exempting women from jury service, are violative of mover's rights under the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution, and unconstitutional on their face.

3. Whether Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure Article 402, exempting women from jury service, are unconstitutional as applied to mover in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment, Section 1, United States Constitution:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges

or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

West's Louisiana Constitution, Article VII, Section 41:

"The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict."

Louisiana Code of Criminal Procedure, Article 402:

"A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service."

STATEMENT OF THE CASE

Mover, a female, was indicted by the Rapides Parish Grand Jury, with the offense of second degree murder in connection with the shooting death of her "common-law" husband, Robert I. Jennings. The incident which resulted in the criminal charge occurred in Alexandria, Louisiana, on July 9, 1973. Defendant was found guilty as charged and filed an Appeal to the Louisiana Supreme Court. That Court affirmed mover's conviction on July 1, 1974, and denied her application for rehearing on August 30, 1974.

The issues presented in this petition were first raised in the trial court by mover's pre-trial Motion to Quash the Grand Jury Indictment and to Declare Unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure. A certified copy of that Motion is attached to and made part of this petition. (See Appendix F)

Mover's Motion to Quash urged that she had been denied rights guaranteed her under the due process and equal protection clause of the Fourteenth Amendment of the United States Constitution by application of Louisiana Constitution Article VII, Section 41, and Louisiana Code of Criminal Procedure Article 402 which excluded women from jury service at the accusatory (Grand Jury) and the trial (Petit Jury) levels. Mover also specifically urged in her Motion to Quash that Louisiana Constitution Article VII, Section 41, and Louisiana Code of Criminal Procedure Article 402 were unconstitutional on their face and additionally were unconstitutional as applied to Mover.

A Stipulation between Mover and the District Attorney regarding the Rapides Parish General Venire, Petit Jury Venire, Grand Jury Venire and Grand Jury, was entered into and filed in connection with the Motion to Quash. A certified copy of that stipulation is attached to and made part of this petition. (See Appendix G) The stipulation established that the Rapides Parish general venire list from which the Grand Jury venire, Grand Jury, Petit Jury venire, and Petit Jury were drawn and selected included the names of five women and four hundred ninety five men. The Petit Jury venire contained the names of two women. The twelve member Petit Jury that convicted mover did not include any women. (See Appendix G)

It was further stipulated that the disproportionate number of women appearing on the Rapides Parish general venire and Petit Jury venire and the complete absence of women from the Grand Jury venire, Grand Jury, and Petit Jury resulted from the adherence by the Rapides Parish Jury Commission to Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure. (See Appendix G)

A hearing was held on mover's Motion to Quash and to Declare Unconstitutional Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure, on October 1, 1973, at Alexandria, Rapides Parish, Louisiana, before the Honorable Martin L. Laird, III, at which time the trial judge denied the Motion to Quash. Attached to and made part of this petition is a certified copy of the Ninth Judicial District Court minutes reflecting the trial judge's denial of mover's Motion. (See Appendix H.)

A Bill of Exceptions was reserved to the trial judge's ruling denying mover's motion and was timely presented to the trial judge subsequent to mover's conviction. A certified copy of the Bill of Exceptions is attached to and made part of this petition. (See Appendix I.) The issue raised in the Bill of Exceptions was properly presented to, and considered by, the Louisiana Supreme Court on appeal as evidenced by its written opinion. (See Appendix D — discussion of bill of exceptions number 1.)

REASONS FOR GRANTING THE WRIT

The issues presented in this petition were recently passed on by a three judge Federal Court in the Eastern District of Louisiana in *Healy, et al v. Edwards, et al,* 363 F. Supp. 1110 (1973), number 73-759 on the docket of this Court. In *Healy,* a declaratory judgment suit, plaintiffs sought a declaration that Louisiana Constitution Article VII, Section 41 and Louisiana Code of Criminal Procedure Article 402 were unconstitutional. In granting plaintiff's relief, the Court stated:

> "Because the Louisiana Constitution denies all litigants Due Process of Law and deprives female litigants of their right to Equal Protection by according an exemption from jury service to women on a basis different from that available to men under substantially similar circumstances, and on the basis of a sexual criterion that is wholly unrelated to the objectives of jury service, we declare it and the statutes enacted pursuant to it unconstitutional. . . ." *Supra* at 1117.

Noting that its opinion was at odds with this Court's opinion in *Hoyt v. State of Florida*, 369 U.S. 57, 82 S.Ct. 159 (1961), the Court in *Healy* noted:

> "Nor must this Court await the day when the Supreme Court itself has occasion to reconsider and overrule *Hoyt*."
>
> 'This Court, of course, must follow the Supreme Court, but there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate Court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case.' *Rowe v. Peyton*, 4th Circuit 1967, 383 F.2d 709, 714, affirmed 391 U.S. 54, 88 S.Ct. 1549, 2 L.Ed.2d 420.

The *Healy* decision, (albiet a District Court opinion) poignantly demonstrates the need for clarification by this Court of the important federal questions presented in this petition.

Reed v. Reed, 1971, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225, and *Frontiero* v. *Richardson*, 1973, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 583, relied on in *Healy.*, appear clearly to signal a departure by this court from the holding in *Hoyt*. (Hoyt's rationale will be discussed later in this petition). A majority of the Louisiana Supreme Court has refused to depart from *Hoyt* until this Court speaks again on the issue. The Louisiana Supreme Court's allegiance to *Hoyt* appears to be in conflict with *Reed* and *Frontiero*.

It is respectfully submitted that this Court should make the departure from *Hoyt* complete and unequivocal for reasons hereinafter assigned.

This Court has often condemned a State's systematic exclusion from jury service of a class of qualified citizens solely because of their race or color. A conviction of a Negro cannot stand under the Equal Protection Clause of the Fourteenth Amendment if based on indictment of a Grand Jury from which Negroes were excluded because of their race. *Alexander v. Louisiana*, 92 S. Ct. 1221 (1972). As early as 1880, it was recognized by this Court that exclusion of a class of persons from jury service on grounds other than race or color may deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws. *Strauder v. State of West Virginia*, 100 U.S. 303, 308, 25 L. Ed. 664, 666 (1880). Thus, the Fourteenth Amendment stretches beyond arbitrary racial exclusions from jury service and reaches any law, as written or applied, which singles out a distinct class for different treatment not based on some reasonable classification. *Hernandez v. State of Texas*, 347 U.S. 475, 478, 74 S. Ct. 667, 670 (1954).

In *Thiel v. Southern Pacific Company*, 328 U.S. 217, 66 S. Ct. 984 (1946), this Court, in striking down the intentional exclusion of wage earners from jury service, asserted that a properly drawn jury is one selected from a group which represents a cross section of the community. The Court emphasized that while not every recognizable class or group in a community must be represented on a given jury, there is no justification for intentionally excluding a particular class of potential jurors. See also *Brown v. Allen*, 344 U.S. 443, 73 S. Ct. 397, 416 (1953);

Smith v. Texas, 311 U.S. 138, 140, 61 S.Ct. 164, 165 (1940). *Ballard v. United States*, 329 U.S. 187, 67 S. Ct. 261 (1946), specifically held that the systematic exclusion of women from juries deprived a female defendant of the right to the representative jury guaranteed her by Congress.

A law which has the practical effect of excluding approximately one-half (1/2) of the available population from jury service denies to a defendant (particularly, a defendant who is a member of the excluded class) a jury which passes constitutional muster.

In *Ballard v. United States, supra*, the majority opinion addressed itself to the question of whether men alone truly represent a cross section of the community:

> "It is said, however, that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men — personality, background, economic status — and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle

interplay of influence one on the other is among the imponderables.

To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded." *Id.*, 329 U.S. at 193, 67 S. Ct. at 264.

It may be impossible to measure precisely how the subtle prejudice resulting from consistent exclusion of women from juries tilts the trembling scales of justice weighing the guilt or innocence of a criminal defendant. But that is no justification for failing to vindicate the constitutional right to a representative jury. *Fay v. New York*, 332 U.S. 261, 300, 67 S. Ct. 1613, 1634 (1947). This is especially true where the female point of view is excluded from a jury considering the case of a female defendant accused of murdering a male victim.

In *Hoyt v. State of Florida*, 368 U.S. 57, 82 S. Ct. 159 (1961), this Court examined a Florida statute requiring women to register for jury service and conceded that there must be no arbitrary and systematic exclusion. The Court asserted that the defendant's appeal turned on the narrow issue of whether an exclusion of women was actually shown. Since the record indicated that 220 women had indeed come forward to serve, the statute did not deny the female defendant her Fourteenth Amendment rights. The two concurring opinions rested solely on the fact that

the record indicated a good faith effort to have women perform jury duty.

It must be admitted that state law cannot totally exclude women from jury service. *White v. Crook,* 251 F. Supp. 401 (M.D. Ala., 1966). It is inconsistent, then, to argue that while women must be accorded the right to serve on juries, the State can hinder, burden, and erect barriers to the exercise of this right. This is analagous to arguing that citizens have a right to vote, but that they must pay a tax before exercising their right. See *Harmon v. Forssenius,* 380 U.S. 528, 85 S. Ct. 1177 (1965).

Hoyt also touched upon the State's interest in safeguarding a woman's responsibility as the center of home and family life. *Supra,* 368 U.S. at 62, 82 S. Ct. at 162, 163. Mover concedes that it can be argued that statutory discrimination based on sex does not violate the Equal Protection Clause if a rational basis exists for the differing treatment. *Muller v. Oregon,* 208 U.S. 412, 28 S. Ct. 324 (1908). But mover denies any reasonable connection between the affirmative action required of a woman who wishes to perform jury duty and the public health, safety, and welfare. Assuming, arguendo, that such a reasonable connection exists, the proper way to protect women's family responsibilities consistent with affording criminal defendants a representative jury is to automatically include women for jury duty, exempting them only upon their individual request.

The compelling concurring opinion of Justice Douglas in *Alexander v. Louisiana, supra,* scores Article 402 of the Code of Criminal Procedure as an unreasonable classification based on sex. He urges that Article 402

evidences an obsolete, anachronistic view of women's role in modern society which is at odds with reality. *Alexander v. Louisiana*, 92 S. Ct. at 1230, 1231.

Article 402 of the Louisiana Code of Criminal Procedure and Section 41 of Article VII of the Louisiana Constitution are unconstitutional on their face and violative of the Fourteenth Amendment of the United States Constitution.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the court below is erroneous. For the reasons assigned, the present petition for Writ of Certiorari should be granted.

Respectfully submitted,

GRAVEL, ROY & BURNES
CAMILLE F. GRAVEL, JR.
JAMES MICHAEL SMALL
P. O. Box 1792
711 Washington Street
Alexandria, Louisiana

CAMILLE F. GRAVEL, JR.

CERTIFICATE

I certify that three copies of the foregoing Petition for Writ of Certiorari have been served by first class United States mail, properly addressed and postage prepaid to each of the following:

Attorney General William Guste,
State Capitol, Baton Rouge, Louisiana; and,

District Attorney Edwin O. Ware,
Rapides Parish Courthouse,
Alexandria, Louisiana,

this ____ day of November, 1974.

Alexandria, Louisiana.

ATTORNEY FOR MOVER